United Nations CCPR/C/120/D/2435/2014

International Covenant on Civil and Political Rights

Distr.: General
19 September 2017

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2435/2014*, **

Communication submitted by:	Fakhridin Ashirov (represented by counsel, Valeryan Vakhitov)
Alleged victim:	The author
State party:	Kyrgyzstan
Date of communication:	7 May 2012 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 24 June 2014 (not issued in document form)
Date of adoption of Views:	28 July 2017
Subject matter:	Arbitrary detention and torture of the author following ethnic unrest
Procedural issue:	Non-substantiation of claims
Substantive issues:	Torture; fair trial; fair trial — legal assistance; arbitrary arrest — detention; discrimination on the ground of ethnic origin
Articles of the Covenant:	7, separately and in conjunction with 2 (3), 9 (1), (3) and (4), 14 (1) and (3) (e) and (g), and 26
Article of the Optional Protocol:	2

1. The author of the communication is Fakhridin Ashirov, an ethnic Uzbek and national of Kyrgyzstan born in 1989. He claims that the State party has violated his rights under article 7, separately and in conjunction with articles 2 (3), 9 (1), (3) and (4), 14 (1) and (3) (e) and (g) and 26 of the Covenant. The Optional Protocol entered into force for Kyrgyzstan on 7 January 1995. The author is represented by counsel.

* Adopted by the Committee at its 120th session (3-28 July 2017).

** The following members of the Committee participated in the examination of the present communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Ahmed Amin Fathalla, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

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The facts as submitted by the author

2.1 On 29 October 2010, Karasu District Court sentenced the author to life imprisonment with confiscation of his property, for organizing riots, destroying property, unlawful use of firearms, and murdering two or more persons who were performing their official duties. On 27 December 2010, Osh Regional Court modified the sentence to 25 years of imprisonment. The latter judgment was upheld by the Supreme Court, on 12 May 2012. During the criminal proceedings before the national courts, the author maintained that he had been forced to confess guilt during the pretrial investigation. He points out that his criminal prosecution is related to the events in Osh of June 2010.

2.2 On 22 June 2010, at around midday, four armed police officers entered the house of the author's father and performed a search, with the aim of finding weapons. No weapons were found during the search and the author's father was taken to a police station in Osh Region. The author's father was forced to call his son and inform him that he was wanted by the police and must go to the village of Kashkar Kyshtak, where the police could apprehend him.

2.3 On the same day, following his father's phone call, the author arrived at the said village, where he was apprehended by four police officers and taken to a police station in Osh Region. There, he was taken to one of the offices on the second floor of the police building. The author's father was held in another office on the same floor. Soon thereafter, the author's father heard his son screaming with pain. Then the father was informed that his son was involved in the murder of the chief of the Karasu Police District. Thereafter, the author's father was released and he waited for his son outside the building.

2.4 On the same day, between 3 and 4 p.m., the author was taken out of the police station. His father witnessed the author being supported by two police officers, as he was unable to move by himself, and saw that his face and clothes were covered with blood. Fourteen hours later, the author was finally registered at the police station. On 23 June 2010, Osh City Court decided to place the author in pretrial detention. On 24 June 2010, the counsel for the author, who had been appointed by the investigator, telephoned the author's father and informed him that he was representing the author.

2.5 On approximately 28 or 29 June 2010, the ex officio counsel telephoned the author's father again and invited him to visit the officer in charge of the investigation. During the meeting, the investigator asked him to pay US$ 10,000 for his son's release. Following a negative response, the investigator asked the father whether he could then pay $5,000. The investigator proposed that the father think about the offer, and stated that if the requested amount was paid, his son would be charged only with participating in the mass riots. After three or four days, the investigator phoned the author's father to find out whether he had managed to collect the requested amount of money. The father had managed to collect $1,000 and the investigator asked him to pay that amount.[1]

2.6 Around 10 July 2010, the author phoned his father and informed him that he had been constantly ill-treated and tortured, that is, he had been forcibly injected with unknown substances and been forced to take unknown medication. During his interrogation, his head had been wrapped in a plastic bag and he had been asked to confess guilt. Further, he stated that he had been forced to sit half-naked on a chair with a hole, and when he sat his genitals were beaten with plastic bottles full of water. In addition, he complained that a sharp object had been inserted under his fingernails and toenails. Moreover, during the night he had been kept handcuffed to a radiator.

2.7 On 4 August 2010, when the author was taken to the identification procedure, he was again severely beaten. According to the author, he was methodically beaten in the area of his abdomen and his head. During the identification procedure, when the author refused to confess guilt, he was again severely beaten to the point that he lost consciousness and had to be taken to a hospital. Nevertheless, he was taken back on the same day to pretrial detention facility No. 5, where his cellmates insisted on taking him to the medical unit of

[1] It is not clear whether the payment was made.

the detention facility. The author spent approximately ten days in the medical unit of the pretrial police detention facility.[2]

2.8 Also on 4 August 2010,[3] the author was visited by his present counsel, since the counsel appointed by the investigator in charge had not been performing his duties. The new counsel noticed bruises on the author's back, a haematoma under one of his eyes, and red bruises under his lips, on both of his arms and on the back of his head. At the counsel's request, a doctor from pretrial detention facility No. 5 examined the author and noted in his medical record all the aforesaid bodily injuries.[4]

2.9 On an unspecified date, a forensic medical examination was performed on the author, in which it was established that, according to his medical documentation, he had been examined by medical personnel on 4 August 2010 and it had been noted that he had bruises on his back, a haematoma under one of his eyes, and red bruises under his lips, on both of his arms and on the back of his head.

2.10 Later in August 2010, the author's father visited him in pretrial detention facility No. 5. During their meeting, the author informed his father that he had been subjected to torture, and showed him a deep wound on his chest and burn scars on his hips and thighs, as well as a missing big toe nail and bruises under other toenails.

2.11 During the initial court hearing on 29 September 2010, the author and other co-defendants told the presiding judge that their confession had been made under torture and duress and should not be retained as evidence. During a break, the police officers escorting the accused to the court started beating them again, asking for confessions. The author claims that there was no reaction from the court and that no investigation was carried out in that respect.

2.12 The author and his counsel complained repeatedly to the prosecutor's office, including to the office of the Prosecutor-General, requesting to have an effective investigation and for criminal proceedings to be initiated into the author's claims of torture. All complaints, however, were rejected. The author also claims that the trial was carried out with a number of procedural violations. Instead of the regular courtroom, the trial took place in the premises belonging to the Ministry of Internal Affairs in the city of Osh. Furthermore, the author's father and other relatives could not be present during the court hearings, since an unknown group of people had threatened the relatives of the defendants, and even assaulted them.

2.13 The author and his co-defendants all claimed that they had been tortured and had given forced confessions, but the court ignored their claims. The author also claims that he was not allowed to call a witness who could testify that during the mass riots, the author was near the border between Kyrgyzstan and Uzbekistan.

2.14 According to the author, he was targeted because of his Uzbek origin. All officials in charge of the investigation and court hearings were ethnic Kyrgyz.

2.15 On 12 May 2011, the Supreme Court rejected his appeal. The author therefore claims that he has exhausted all available and effective domestic remedies.

The complaint

3.1 The author claims that the State party's authorities tortured him to elicit a confession, and failed to subsequently carry out an investigation into his complaints of ill-treatment and torture, and that these violations amount to a breach of his rights under article 7, read separately and in conjunction with article 2 (3) (a) of the Covenant.

[2] The author provides a copy of the medical certificate, which is the only medical document of any kind provided by the parties.

[3] The author submits that Mr. Vakhitov formally started representing him on 2 August 2010.

[4] The author provides a copy of the decision to examine him, but not the doctor's findings. It is not clear whether this examination also occurred on 4 August 2010.

3.2 The author further claims that his apprehension and pretrial detention, as well as the fact that the judge who decided on his detention failed to examine the lawfulness of his arrest, were in violation of article 9 (1), (3) and (4) of the Covenant.

3.3 The author claims that he did not receive a fair and public hearing, in violation of his rights under article 14 (1) of the Covenant. He also claims violation of article 14 (3) (e) of the Covenant, as he was not allowed to call an important witness to testify in his defence. Furthermore, the confession that had been obtained as a result of torture was used as evidence against him, in violation of article 14 (3) (g).

3.4 The author claims that he was unfairly targeted because of his ethnicity, in violation of article 26 of the Covenant.

State party's observations on admissibility and the merits

4.1 On 6 February and 8 July 2015, the State party provided its observations on the admissibility and merits of the communication. The State party advises, inter alia, that during June 2010 events, the chief of the Karasu Police District and his driver were killed, on 13 June 2010, by then unknown persons. As a result of the investigation, several persons were arrested, including the author. The author was detained on 22 June 2010.

4.2 The author was charged under several articles of the Criminal Code of Kyrgyzstan, and on 26 October 2010 was sentenced to life imprisonment. On 27 December 2010, that verdict and sentence were changed in part and the author's sentence was reduced to 25 years, by Osh Regional Court. Upon further review by the Supreme Court of Kyrgyzstan, the author's sentence of 25 years was confirmed, on 12 May 2011.

4.3 Regarding the author's claims of torture, the State party submits that on 5 August 2010, the author's lawyer filed a complaint with the prosecutor's office, alleging torture at the hands of Osh police officers. As a result, a medical examination was ordered. On 12 August 2010, the doctor who carried out the examination concluded that although some injuries had been detected on the author's body, "they did not correspond to the time and circumstances" described by the author. The prosecutor's office therefore refused to initiate criminal proceedings into the author's torture claims.

4.4 On 23 September 2010, Osh City Court issued an order to re-examine the author. The second medical examination, the findings of which were issued on 29 November 2011, also concluded that there were some minor injuries on the author's body, but could not definitively indicate the exact date of infliction of those injuries. The prosecutor's office then decided again not to initiate criminal proceedings into the author's torture claims.

4.5 Furthermore, the author and other co-defendants complained that they were beaten during a break from court hearings on 29 September 2010 by officers of the special "Sher" law enforcement unit of the Ministry of Internal Affairs of Kyrgyzstan. The Osh Regional Bureau of Forensic Medicine carried out an examination of the author and his co-defendants, and on 4 October 2010 issued a conclusion, in which it found no signs of any injuries on any defendants. According to the medical records relating to the author, his medical condition was assessed as being "satisfactory".[5]

4.6 The court hearings were held in the premises of military unit No. 703 of the Ministry of Internal Affairs of Kyrgyzstan; they were held there only to provide security to the defendants and their relatives. On the day in question, 29 September 2010, the court hearings ended at 5.30 p.m., to be resumed on 30 September 2010. It was ascertained that on 29 September 2010, officers of the special "Sher" law enforcement unit prevented attacks on defendants from several relatives of the victims.

4.7 During the court hearings on 30 September 2010, one of the lawyers for the defendants, T.A., complained to the judge that on 29 September 2010, his clients had been severely beaten by officers of military unit No. 703. That complaint resulted in an angry reaction from the relatives of victims, who tried to attack the lawyer, T.A. In order to avoid confrontation, the court hearings were postponed to 19 October 2010.

[5] The State party does not provide further information on this medical classification.

4.8 The complaints that originated from the alleged incident on 29 September 2010 were examined, nevertheless, by the prosecutor's office. On 10 October 2010, the prosecutor's office decided not to launch a criminal investigation into those allegations, due to lack of substantiation.[6]

4.9 Furthermore, it was ascertained that no violations of the Criminal Procedure Code of Kyrgyzstan had been committed during the court hearings. It has to be noted, however, that torture is a crime that is difficult to prove, especially with the passage of time — it becomes impossible to identify the exact time and exact injuries that were allegedly inflicted. Additional difficulties concern alleged witnesses to torture crimes, who are, as a rule, sharing prison cells and refuse to testify to implicate law enforcement officials.

4.10 The Office of the Prosecutor-General of Kyrgyzstan condemns the use of torture, and takes all measures to prevent such incidents. As such, the authorities carry out inspections of places of detention. Prosecutors are also required to examine defendants to identify incidents of torture.

4.11 According to the Criminal Procedure Code of Kyrgyzstan, all lower court decisions can be challenged within existing appellate procedures, including the supervisory appeal procedure. Such appellate review has been carried out in the case of the author and no violations have been identified. According to article 96 of the Constitution of Kyrgyzstan, the decisions of courts at the supervisory level are not subject to appeal.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 9 April and 10 August 2015, the author provided his comments on the State party's observations on admissibility and the merits. The author submits that the claims that he raised in his initial communication to the Committee do not ask the Committee to overturn the verdict and sentence that he received. Rather, these claims focus on specific violations of the Covenant that the author suffered.

5.2 The author reiterates his claims that he was asked by his father to come to see the law enforcement officers who at the time were unlawfully holding his father. The author's father himself was subsequently released, but he stayed near the police station and witnessed his son being taken out of the building. His son was beaten up so badly that he required help from two police officers to walk.

5.3 The author also submits that his father could not participate in court hearings, as the State party's authorities could not ensure the security of relatives of the defendants. This is a clear violation of article 14 (1) of the Covenant, which calls for a "fair and public" hearing. Outside of the courtroom, the relatives of defendants were harassed, insulted and even beaten up.

5.4 The author submits that on 4 August 2010, despite having hired a private lawyer, he was assigned a lawyer paid for by the authorities, and that during the same day, he was severely beaten up by an investigator. The author complained that this had given him acute pain in abdomen, and chest pain. The lawyer for the author demanded a medical examination, which confirmed numerous injuries on his head, stomach, chest, eyes and back. This was entered into the author's medical records in the pretrial detention facility.

5.5 Starting from 6 August 2010, the author's lawyer filed several complaints alleging torture. Some complaints were forwarded to the Ministry of Internal Affairs, the very institution whose officers had perpetrated these crimes. On several occasions, the complaints were rejected by the prosecutor's office without conducting an effective investigation (e.g. on 13 August 2011). The courts have also rejected all complaints from the author.

5.6 The author submits that contrary to the State party's contentions, it is very easy to prove that he suffered torture at the hands of the police officers. The author provides copies of medical examinations, witness statements from his father and from himself, and other documents.

[6] The prosecutor's office decided that no crime was committed on 29 September 2010.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether or not it is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the author's claim that he has exhausted all effective domestic remedies available to him. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee notes the author's claims under article 26 of the Covenant, but considers that the author has failed to provide any information to demonstrate that the State party violated his right to the equal protection of the law. Regarding the author's allegations concerning violations of article 14 (3) (e) of the Covenant, in relation to the examination of witnesses during the trial, the Committee recalls that it is generally for States parties' courts to evaluate the facts and the evidence in a particular case, unless it can be ascertained that the evaluation was clearly arbitrary or amounted to a denial of justice, or that the court failed in its duty to maintain independence and impartiality.[7] In the present case, the Committee considers that the author failed to demonstrate that the alleged failure to call witnesses reached the threshold for arbitrariness in the evaluation of the evidence, or amounted to a denial of justice. In the absence of any further pertinent information on file, therefore, the Committee considers that the author has failed to sufficiently substantiate, for the purposes of admissibility, these allegations. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.5 In the Committee's view, the author has sufficiently substantiated, for the purposes of admissibility, his remaining claims under article 7, separately and in conjunction with articles 2 (3), 9 (1), (3) and (4), and 14 (1) and (3) (g) of the Covenant, declares them admissible and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 Firstly, the Committee notes the author's allegation that on a number of occasions, he suffered torture at the hands of law enforcement officers. The author provides detailed descriptions of the manner in which the torture was inflicted, and the times, and even the names of some of the alleged perpetrators. In addition, the author provides statements of witnesses, including his father and his counsel, as well as a medical certificate, which corroborate the alleged injuries. Furthermore, the Committee notes that the author and his counsel made numerous complaints to the prosecutor's office, and also complained during the court hearings, about torture. The Committee notes that while the State party reports that it conducted enquiries into some of the numerous complaints made by the author, it has not been shown that those investigations were launched promptly or that they were conducted effectively. The Committee wishes to underline that the first allegations of torture were made by the author on 6 August 2010, immediately after he was granted access to his private lawyer. The Committee considers that in the circumstances of the present case, and in particular in the light of the State party's inability to explain the visible signs of mistreatment that were witnessed on a number of occasions, due weight should be given to the author's allegations.

[7] See, inter alia, communications No. 1188/2003, *Riedl-Riedenstein et al. v. Germany*, decision of inadmissibility adopted on 2 November 2004, para. 7.3; and No. 1138/2002, *Arenz et al. v. Germany*, decision of inadmissibility adopted on 24 March 2004, para. 8.6.

7.3 Regarding the State party's obligation to properly investigate the author's claims of torture, the Committee recalls its jurisprudence according to which criminal investigation and consequential prosecution are necessary remedies for violations of human rights, such as those protected by article 7 of the Covenant.[8] While the State party contends that it conducted an investigation, the Committee notes that according to the material on file, the State party's authorities did not provide information to show that they questioned any witnesses (including the author himself and his father), nor did they produce the results of the medical examination. In these circumstances, the Committee considers that no effective investigation was carried out into the allegations of torture, despite a witness statement from the author's father, and a medical certificate indicating injuries on the author's body. In the circumstances of the present case, and considering the State party's failure to provide further medical records, the Committee concludes that the facts before it disclose a violation of the author's rights under article 7 of the Covenant, read in conjunction with article 2 (3).

7.4 With respect to the author's claims under article 14 (1) of the Covenant, the Committee notes the uncontested facts that the court hearings were not held in the regular courtroom but at a military installation, and that relatives of the defendants, including those of the author, were not allowed to be present at those hearings. The State party submits in its observations that the very reason the hearings were held at the military unit was to provide security for the defendants and their relatives. The Committee recalls provisions of its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial that "all trials in criminal matters or related to a suit at law must in principle be conducted orally and publicly".[9] Article 14 (1) of the Covenant acknowledges that courts have the power to exclude all or part of the public "for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice".[10] The State party contends that the reason for the court hearings being held at the military unit was "only to provide security to the defendants and their relatives". However, the State party failed to explain why it was necessary to exclude relatives of the author from being present during the hearings under one of the justifications contained in article 14 (1). In the absence of pertinent explanations from the State party, the Committee must conclude that the State party applied a disproportionate restriction on the author's rights to a fair and public hearing, and therefore the author's rights under article 14 (1) have been violated.

7.5 In the light of the previous findings, the Committee will not examine the author's claims under articles 9 (1), (3) and (4) and 14 (3) (g) for the same facts.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under article 7 in conjunction with article 2 (3) and under article 14 (1), of the Covenant.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to take appropriate steps to (a) quash the author's conviction, release the author, and if necessary, conduct a new trial, in accordance with the principles of fair hearings, presumption of innocence and other procedural safeguards; (b) conduct a prompt and impartial investigation into the author's allegations of torture; and (c) provide the author with adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has

[8] See the Committee's general comments No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 14, and No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 18.

[9] See para. 28.

[10] Ibid., para. 29.

undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to disseminate them widely in the official languages of the State party.

Annex

Individual opinion of Committee member José Manuel Santos Pais (dissenting)

1. I regret not being able to fully share the reasoning offered by the majority of the Committee, underlying its finding that the State party violated the author's rights under article 7 of the Covenant, read in conjunction with article 2 (3). I have some hesitations in this respect, especially as regards the facts as stated in paragraph 7.2.

2. It is true that there are several allegations of torture in the file, but these are normally made by the author (paras. 2.6, 2.7, 2.10, 2.11, 2.13 and 3.1), his counsel (para. 2.8) or his father (paras. 2.3 and 2.4). And yet, when one begins to look for more concrete evidence of objective signs of torture, one is confronted with the fact that there is only one medical certification provided in the file attesting bodily injuries (see footnote 2 (relates to para. 2.7)).

3. In fact, although the author alleged he was severely beaten, on 4 August 2010, and spent approximately ten days in the medical unit of the pretrial police detention facility as a result (para. 2.7), the signs on the author's back, a haematoma under one of his eyes, and red bruises under his lips, on both of his arms and on the back of his head, fall short of reflecting such "heavy beating".

4. In this regard, the State alleges that a medical examination was ordered and that on 12 August 2010, scarcely one week after the "heavy beating", the doctor who carried out the examination concluded that while some injuries were detected on the author's body, "they did not correspond to the time and circumstances" as described by the author (para. 4.3). The State also alleges that on 23 September 2010, Osh City Court issued an order to re-examine the author. The second medical examination, the findings of which were issued on 29 November 2011, concluded again some minor injuries on the author's body, but could not definitively indicate the exact date of infliction of those injuries (para. 4.4). And the State alleges finally that, due to the fact that the author and other co-defendants complained that they were beaten during a break from court hearings on 29 September 2010, by the officers of the special "Sher" law enforcement unit of the Ministry of Internal Affairs of Kyrgyzstan, the Osh Regional Bureau of Forensics Medicine carried out an examination of the author and his co-defendants, and on 4 October 2010 issued a conclusion, in which it found no signs of any injuries on any defendants. According to the medical records of the author, his medical condition was assessed as being "satisfactory" (para. 4.5). It is true, however, that the State did not produce the results of these two last medical examinations, but neither did the author.

5. Thus, although understanding the position of the majority of the Committee, that in the light of the State party's inability to explain the visible signs of mistreatment that were witnessed on a number of occasions, due weight should be given to the author's allegations (para. 7.2), I would rather have some more objective evidence of these "visible signs of mistreatment" to conclude that there was a violation of the author's rights under article 7 of the Covenant, read in conjunction with article 2 (3).

6. I also regret not being able to share the reasoning offered by the majority of the Committee, underlying its finding that the State party violated the author's rights under article 14 (1) of the Covenant (para. 7.4). In this respect, the majority concluded that the State party failed to explain why it was necessary for the trial court to exclude relatives of the author from being present during the hearings, under one of the justifications contained in article 14 (1).

7. However, it is the author himself who confirms that it was not the trial court that excluded the presence of his father or other relatives during the court hearings. They could not attend the court hearings because an unknown group of people threatened the relatives of the defendants, and even assaulted them (para. 2.11). And the author further confirms this by adding that his father could not participate in court hearings since the State party's

authorities could not ensure the security of relatives of the defendants. Outside of the courtroom, the relatives of defendants were harassed, insulted and even beaten up (para. 5.3).

8. Such security problems were, in fact, confirmed by the State, when it acknowledged that on 29 September 2010, the officers of the special "Sher" law enforcement unit prevented attacks on defendants from several relatives of the victims (para. 4.6). And that the court hearings had to be postponed to 10 October 2010, to avoid confrontation, because of the angry reaction from the relatives of victims, who tried to attack one of the lawyers for the defendants (para. 4.7).

9. It is thus difficult to understand, in face of such sensitive circumstances, which posed severe difficulties in terms of management of court hearings, and public security, how the majority of the Committee came to conclude that the State party, that is, the trial court, applied a disproportionate restriction on the author's rights to a fair and public hearing, and therefore on the author's rights under article 14 (1), by preventing access by the relatives of the author to the court hearings — a decision which, in fact, according to the author himself, the trial court did not take.